

Decision 05-04-011 April 7, 2005

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application Pursuant to Public Utilities Code
Section 854 for Approval of the Indirect Transfer
of Control of Cypress Communications
Operating Company, Inc. (U-6701-C)

Application 04-12-002
(Filed December 2, 2004)

**OPINION AUTHORIZING INDIRECT TRANSFER OF CONTROL
OF CYPRESS COMMUNICATIONS OPERATING COMPANY, INC.
TO TECHINVEST HOLDING COMPANY, INC.**

Summary

This decision grants the joint application of Cypress Communications Operating Company, Inc. (Cypress Operating), its ultimate parent company, Cypress Communications Holding Company, Inc. (Cypress Holding), and TechInvest Holding Company, Inc. (THC) for approval of the indirect transfer of control of Cypress Operating to THC pursuant to Pub. Util Code §§ 852 and 854.¹

Parties to the Transaction

Cypress Operating is a Delaware corporation that holds a certificate of public convenience and necessity (CPCNs) which authorize it to provide limited facilities-based and resold interexchange and local exchange services in California.² Cypress Operating is a wholly-owned subsidiary of

¹ All Code references are to the Public Utilities Code, unless otherwise stated.

² See Decision (D.) 02-09-043, D.02-10-025.

Cypress Communications, which in turn is a wholly-owned subsidiary of Cypress Holding. Cypress Operating's principal place of business is located in Atlanta, Georgia.

Cypress Communications provides bundled telecommunications services to small and medium-sized businesses located in commercial office buildings in a number of major metropolitan areas in the United States. Cypress Communications provides these services on a resold basis using facilities and switches that are owned and operated by other telecommunications carriers.

Cypress Holding is a publicly-traded corporation organized under the laws of Delaware with the same principal place of business as Cypress Operating.

THC is a newly formed Delaware corporation established to purchase Cypress Holding. THC is a wholly-owned subsidiary of the First Islamic Bank (FIB). THC's acquisition of Cypress Holding was structured and executed by Crescent Capital Investments, Inc. (Crescent), a Delaware corporation with headquarters in Atlanta, Georgia. Crescent is an indirect, wholly-owned U. S. subsidiary of FIB.

Proposed Transaction

As a result of this transaction, Cypress Operating will become a wholly-owned subsidiary of THC. The voting interests of THC will be held in equal shares by five individuals³, all of whom are U. S. citizens and are either employees of or consultants to Crescent. Each of these individuals will grant a revocable proxy to First Investment Management Limited (FIM), a wholly owned

³ These persons are David Crosland, Charles Ogburn, Ed Underwood, Ransom James, and Bob Shingler.

subsidiary of FIB, to vote the voting stock of THC and make major decisions with respect to the voting stock of THC.

Cypress Operating will continue to hold its CPCN to provide facilities-based and resold local and interexchange telecommunications services in California.

Applicants represent that this change in ownership will benefit Cypress Operating and its customers, because THC will bring a new infusion of capital to this company.

The applicants further represent that the transaction will be transparent to customers. There will be no change in the name or management of Cypress Operating, because the transaction will be completed at the parent company level only. Customers will continue to receive service from Cypress Operating under the same rates, terms, and conditions after the transaction is approved.

Discussion

Under § 852, no public utility, and no subsidiary, affiliate of, or corporation holding a controlling interest in, a public utility, shall purchase or acquire, take or hold, any part of the capital stock of any other public utility, organized or existing under the laws of this state, without prior Commission authorization. Section 854 further requires Commission authorization before a company may “merge, acquire, or control . . . any public utility organized and doing business in this state . . . “ The purpose of these and related sections is to enable the Commission, before any transfer of a public utility is consummated, to review the situation and to take such action, as a condition of the transfer, as the public interest may require. (San Jose Water Co. (1916) 10 CRC 56.)

In a situation in which a company that does not possess a CPCN desires to acquire control of a company that does possess a CPCN, we will apply the same requirements as in the case of an applicant seeking a CPCN to exercise the type of authority held by the company being acquired. We therefore apply these requirements to THC.

The Commission has established two major criteria for determining whether a CPCN should be granted. An applicant who desires to operate as a facilities-based and resale provider of local exchange and interexchange service must demonstrate that it has a minimum of \$100,000 in cash or cash equivalent, reasonably liquid and readily available to meet the firm's start-up costs. In addition, the applicant is required to make a reasonable showing of technical expertise in telecommunications or a related business.

THC has provided financial statements and other evidence that demonstrates that it has sufficient resources to meet our financial requirements. Since Cypress Communications is expected to continue to operate under the same management, we find that our requirement for technical expertise is satisfied, for the purposes of this transaction only.⁴ The transaction will improve Cypress Communications' access to capital, which should improve its financial position and ability to serve customers in this state.⁵ In addition, this transaction will be transparent to customers. Therefore, the proposed transaction is in the public interest.

Therefore, we will grant the application pursuant to §§ 852 and 854.

⁴ We made no determination that THC would otherwise meet the technical and managerial requirements for authorization to provide telecommunications services in this state.

Categorization and Need for Hearings

In Resolution ALJ 176-3144 dated December 16, 2004, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received. There is no apparent reason why the application should not be granted. Given these developments, a public hearing is not necessary, and it is not necessary to disturb the preliminary determinations.

Comments on Draft Decision

This is an uncontested matter, in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

Assignment of Proceeding

Susan P. Kennedy is the Assigned Commissioner and Myra J. Prestidge is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. Cypress Operating is a wholly-owned subsidiary of Cypress Communications, which in turn is a wholly-owned subsidiary of Cypress Holding.
2. By D.02-09-043 and D.02-10-025, Cypress Operating was granted a CPCN to provide limited facilities-based and resold local exchange and interexchange services in California.
3. THC does not hold a CPCN to provide telecommunications services in this state.
4. As a result of the transaction, THC will acquire ultimate control of Cypress Operating, through the acquisition of its ultimate parent company, Cypress Holding.

5. There will be no change in the name or management of Cypress Operating as a result of the transaction.

6. The customers of Cypress Operating will continue to receive service under the same rates, terms, and conditions after the transaction.

7. THC has sufficient financial resources to meet the Commission's requirements to provide facilities-based and resold local exchange and interexchange services.

8. Since Cypress Operating will potentially have access to THC's financial resources, this transaction will improve the financial stability of Cypress Communications.

9. Since Cypress Operating's management will remain the same after this transaction, THC has met the requirements for technical and managerial expertise to provide telecommunications services, for the purposes of this transaction only.

10. Notice of this application appeared on the Commission's Daily Calendar on December 17, 2004. There were no protests to this application.

11. No hearings are necessary.

Conclusions of Law

1. The Commission will apply the same requirements to a request for approval of an agreement to acquire control of a facilities-based and resale provider of local exchange and interexchange telecommunications services within California as it does to an applicant for authority to provide such services.

2. THC meets the Commission's requirements for the issuance of a CPCN to provide facilities-based and resold local exchange and interexchange telecommunications services, for the purposes of this transaction only.

3. This transaction is in the public interest.

4. In order to avoid delaying this transaction, the approval of the application should be made effective immediately.

O R D E R

IT IS ORDERED that:

1. Pursuant to Pub. Util. Code §§ 852 and 854, the joint application of Cypress Communications Operating Company, Inc. (Cypress Operating), Cypress Communications Holding Company, Inc., and TechInvest Holding Company, Inc. (THC), for approval of the indirect transfer of control of Cypress Operating to THC is approved.

2. Application 04-12-002 is closed.

This order is effective today.

Dated April 7, 2005, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
SUSAN P. KENNEDY
DIAN M. GRUENEICH
Commissioners